

1 **BEFORE THE ARIZONA STATE BOARD OF PHARMACY**

2 In the Matter of:

Investigation Case Number 04-0016-PHR

3 MICHAEL BIEGUN, RPh
4 Holder of Pharmacist License
5 Number 10662
6 In the State of Arizona,

Respondent

**CONSENT AGREEMENT AND ORDER
FOR SUSPENSION AND PROBATION**

7 **RECITALS**

8 In the interest of a prompt and judicious settlement of this case, consistent with the public
9 interest, statutory requirements and the responsibilities of the Arizona State Board of Pharmacy ("Board")
10 and under A.R.S. §§ 32-1901 *et. seq.* and 41-1092.07(F)(5), MICHAEL BIEGUN, RPh ("Respondent"),
11 holder of pharmacist license number 10662 to practice pharmacy in the State of Arizona, and the Board
12 enter into the following Recitals, Findings of Fact, Conclusions of Law and Order ("Consent
13 Agreement") as a final disposition of this matter.

14 1. Respondent has read and understands this Consent Agreement and has had the
15 opportunity to discuss this Consent Agreement with an attorney, or has waived the opportunity
16 to discuss this Consent Agreement with an attorney.

17 2. Respondent understands that he has a right to a public administrative hearing concerning the
18 above-captioned matter, at which hearing he could present evidence and cross-examine witnesses. By
19 entering into this Consent Agreement, Respondent freely and voluntarily relinquishes all right to such
20 an administrative hearing, as well as rights of rehearing, review, reconsideration, appeal, judicial review
21 or any other administrative and/or judicial action, concerning the matters set forth herein. Respondent
22 affirmatively agrees that this Consent Agreement shall be irrevocable.

23 3. Respondent understands that this Consent Agreement or any part of the agreement may
24 be considered in any future disciplinary action against him.

25 4. Respondent understands this Consent Agreement deals with Board Investigation Case No. 04-
26 0016-PHR involving allegations of unprofessional conduct against Respondent. The investigation into

1 these allegations against Respondent shall be concluded upon the Board's adoption of this Consent
2 Agreement.

3 5. Respondent understands that this Consent Agreement does not constitute a dismissal
4 or resolution of any other matters currently pending before the Board, if any, and does not constitute any
5 waiver, express or implied, of the Board's statutory authority or jurisdiction regarding any other pending
6 or future investigation, action or proceeding. Respondent also understands that acceptance of this
7 Consent Agreement does not preclude any other agency, subdivision, or officer of this State from
8 instituting other civil or criminal proceedings with respect to the conduct that is the subject of this
9 Consent Agreement.

10 6. Respondent acknowledges and agrees that upon signing this Consent Agreement and
11 returning this document to the Board's Executive Director, Respondent may not revoke his acceptance
12 of the Consent Agreement or make any modifications to the document regardless of whether the
13 Consent Agreement has been signed by the Executive Director. Any modification to this original
14 document is ineffective and void unless mutually agreed by the parties in writing.

15 7. Respondent understands that the Consent Agreement shall not become effective unless
16 and until adopted by the Board and signed by its Executive Director.

17 8. If a court of competent jurisdiction rules that any part of this Consent Agreement is void
18 or otherwise unenforceable, the remainder of the Consent Agreement shall remain in full force and effect.

19 9. Respondent understands and agrees that if the Board does not adopt this Consent Agreement,
20 he will not assert as a defense that the Board's consideration of this Consent Agreement constitutes bias,
21 prejudice, prejudgement or other similar defenses.

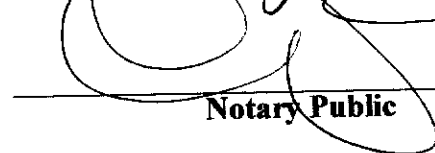
22 10. Respondent understands that this Consent Agreement is a public record that may be
23 publicly disseminated as a formal action of the Board and may be reported as required by law to
24 the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank.

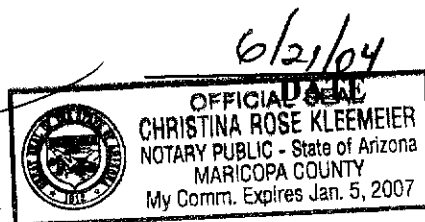
25 11. Respondent understands that any violation of this Consent Agreement constitutes
26 unprofessional conduct under A.R.S. § 32-1927 (A) (17) (the licensee violated a formal order, terms of

1 probation, a consent agreement or a stipulation issued or entered into by the board or its Executive
2 Director pursuant to this chapter) and may result in disciplinary action under A.R.S. § 32-1927.

3 REVIEWED AND ACCEPTED BY:

4 
MICHAEL BIEGUN, RPh

5 
6 Notary Public



7
8 **FINDINGS OF FACT**

9 By stipulation of the parties, this Consent Agreement is entered into for final disposition of the
10 matters described herein. Respondent admits to the following Findings of Fact:

11 12. The Board is the duly constituted authority for the regulation and control of the practice of
12 pharmacy in the State of Arizona.

13 13. The Board possesses jurisdiction over the subject matter and over Respondent as a licensee
14 of the Board under A.R.S. § 32-1901, et seq.

15 14. Respondent is the holder of pharmacist license 10662 which permits Respondent to practice
16 pharmacy in the State of Arizona.

17 15. On February 26, 2004, Respondent was employed as a staff pharmacist at Walgreens Pharmacy
18 #5890, 11250 E. Via Linda, Scottsdale, Arizona.

19 16. On February 26, 2004, Respondent was on duty at Walgreens Pharmacy #5890, when an
20 incorrect receipt and patient information leaflets were placed in a bag containing prescription number
21 (number 604730-5890) for patient (J.D.) which bag contained contained twelve (12) Prozac 90 mg.
22 capsules. The incorrect receipt and patient information were for Zithromax 200mg./5ml. oral suspension.
23 The prescription with the incorrect receipt and information was dispensed to the patient or the patient's
24 agent by a non-pharmacist employee of Walgreens Pharmacy #5893. Under A.A.C. R4-23-402 (B),
25 Respondent was required to provide an oral consultation to the patient or the patient's agent about this
26 new prescription, but no consultation was provided. The patient denies refusing an oral consultation and

1 the alleged refusal of oral consultation was not documented by pharmacy personnel as required by A.A.C.
2 R4-23-402 (E).

3 CONCLUSIONS OF LAW

4 17. Under A.R.S. § 32-1901, et seq., the Board is the duly constituted authority for the regulation
5 and control of the practice of pharmacy in the state of Arizona, under A.R.S. § 32-1901, et seq.

6 18. The conduct and circumstances in paragraphs 15 and 16 constitutes a violation (s) of A.A.C.
7 R4-23-402 (B) and (E) to wit:

8 B. Only a pharmacist, graduate intern, or pharmacy intern shall provide oral consultation about a
9 prescription medication to a patient or patient's agent in an outpatient setting, including a patient
discharged from a hospital. The oral consultation is required whenever the following occurs:

- 10 1. The prescription medication has not been previously dispensed to the patient;
11 2. A new prescription number is assigned to a previously dispensed prescription medication;
12 3. The prescription medication has not been previously dispensed to the patient in the same
13 strength or dosage form or with the same directions;
4. The pharmacist, through the exercise of professional judgment, determines that oral
consultation is warranted; or
5. The patient or patient's agent requests oral consultation.

14 E. Nothing in subsection (B) shall be construed as requiring a pharmacist, graduate intern, or
15 pharmacy intern to provide oral consultation if a patient or patient's agent refuses the consultation.

- 16 1. Only a pharmacist, graduate intern, or pharmacy intern shall accept a refusal for
consultation.
17 2. A pharmacist, graduate intern, or pharmacy intern shall document, or assume
responsibility to document, a refusal for consultation on the original prescription order or
document by alternative methods approved by the Board or its designee.

18 19. The conduct and circumstances described in the Findings of Fact above constitute grounds for
19 disciplinary action under A.R.S. § 32-1927 (A)(10) and A.R.S. § 32-1927 (B)(2) to wit:

20 **A.R.S. § 32-1927 (A)(10)** The license of any pharmacist or pharmacy intern may be revoked
21 or suspended or a pharmacist or pharmacy intern may be placed on probation by the board
when :

22 The licensee is found by the board to be guilty of violating any Arizona or federal
23 law, rule, or regulation relating to the manufacture and distribution of drugs, devices, or the
practice of pharmacy.

24 **A.R.S. § 32-1927 (B)(2)** The license of any pharmacist or pharmacy intern may be revoked
25 or suspended or the pharmacist or pharmacy intern may be placed on probation or censured
and a civil penalty of not more than one thousand dollars (\$1000.00) for each offense may
26 be imposed by the board when:

1 The licensee is found by the board, or is convicted in a federal or state court, of having
2 violated federal or state laws or administrative rules pertaining to marijuana, prescription-
3 only drugs, narcotics, dangerous drugs or controlled substances.

4 **ORDER**

5 Based upon the above Findings of Fact and Conclusions of Law and under the authority granted
6 to the Board by A.R.S. § 32-1928, 41-1092.07 (F)(5), and A.A.C. R4-23-104(G).

7 **IT IS HEREBY ORDERED** that:

8 20. License No. 10662, which was issued to Respondent for the practice of pharmacy in the State
9 of Arizona, is hereby placed on **PROBATION** for six (6) months.

10 21. Respondent shall pay all fees and complete all Continuing Education requirements throughout
11 the term of his probation to maintain Pharmacist License Number 10662.

12 22. Respondent shall successfully complete eight (8) contact hours, (0.8 C.E.U.) of American
13 Council on Pharmaceutical Education (ACPE) courses approved by the Board staff before the termination
14 of the PROBATION. The courses shall be limited to topics of the patient counseling by pharmacists.

15 23. Respondent shall not serve as a preceptor pharmacist or pharmacist-in-charge throughout
16 the term of his probation.

17 24. Respondent shall obey all federal and state laws and rules governing the practice of pharmacy.

18 25. Respondent shall furnish the Board with a list of all jurisdictions in which he maintains or
19 has maintained licensure in the profession of pharmacy along with the registration number of said licenses.

20 26. Respondent is required to advise the Board immediately of any change in pharmacy
21 employment status throughout the term of his probation.

22 27. Respondent is required to furnish all pharmacy employers with a copy of this Board Order
23 throughout the term of his probation.

24 28. If Respondent violates this Order in any way or fails to fulfill the requirements of this Order,
25 the Board, after giving the Respondent notice and the opportunity to be heard, may revoke, suspend or
26 take other disciplinary actions against the Respondent. The issue of such hearing will be limited solely
to whether this Order has been violated.

29. Respondent shall appear before the Board at a regularly scheduled Board meeting on or after December 24, 2004 to request that the probation imposed by this Order be terminated. Respondent's failure to petition the Board to terminate the probation shall extend the probation period.

DATED and EFFECTIVE this 11th day of August, 2004

ARIZONA STATE BOARD OF PHARMACY



Hal Wand, RPh
Executive Director
Arizona State Board of Pharmacy

ORIGINAL of the foregoing, fully executed, filed this 13th day of August, 2004, with:

Arizona State Board of Pharmacy
4425 W. Olive Avenue, #140
Glendale, Arizona 85302

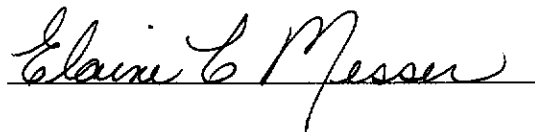
Fully Executed Copy of the foregoing sent via Certified US mail this 13th day of August, 2004 to:

MICHAEL BIEGUN RPh
12166 E. Mercer Lane
Scottsdale, AZ 85259

and

Roberto Pulver
Assistant Attorney General
1275 W. Washington, CIV/LES
Phoenix, Arizona 85007
Attorney for the State

By:



COMPLETE THIS SECTION ON DELIVERY	
A. Received by (Please Print Clearly) <i>Tracey Biegun</i>	B. Date of Delivery <i>6/9/04</i>
C. Signature <i>Tracey Biegun</i>	<input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee
D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below:	
3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

SENDER: COMPLETE THIS SECTION	
1. Article Addressed to: Mr. Michael Biegun 12166 E. Mercer Lane Scottsdale AZ 85259	
2. Article Number (Copy from service label) 7000 1670 0006 4393 4884	

US Form 3811, July 1999
Domestic Return Receipt
102585-00-M-0952